

CAV - Kroupa

**UNITED STATES TAX COURT
Washington, D. C. 20217**

ERNEST JAN FOWLKE,

Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

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Docket No. 24767-10

ORDER

Pursuant to Rule 152(b), Tax Court Rules of Practice and Procedure, it is

ORDERED that the Clerk of the Court shall transmit to petitioner and to respondent a copy of the pages of the transcript of the proceedings of the above case before Judge Diane L. Kroupa at Las Vegas, Nevada, on March 15, 2012, containing her oral findings of fact and opinion.

In accordance with the oral findings of fact and opinion, decision will be entered for respondent.

**(Signed) Diane L. Kroupa
Judge**

Dated: Washington, D.C.
April 25, 2012

SERVED Apr 30 2012

1 BENCH OPINION BY JUDGE DIANE L. KROUPA
2 ERNEST JAN FOWLKE V. COMMISSIONER DOCKET NO.: 24767-10
3 MARCH 15, 2012
4

5 THE COURT: The Court has decided to render
6 oral findings of fact and opinion in this case and the
7 following represents the Court's oral findings of fact
8 and opinion. These oral findings of fact and opinion
9 shall not be relied upon as precedent in any other
10 case.

11 This bench opinion is made pursuant to the
12 authority granted by Section 7459(b) and Rule 152.
13 All section references are to the Internal Revenue
14 Code for 2004, 2005, 2006, 2007, and 2008, the years
15 at issue, and all Rule references are to the Tax Court
16 Rules of Practice and Procedure.

17 This deficiency case is before the Court on
18 Respondent's Motion for Judgment on the Pleadings,
19 filed on November 14, 2011. Petitioner filed a
20 belated response. The Court scheduled Respondent's
21 motion for a hearing in Las Vegas, Nevada. We also
22 have before us Petitioner's Motion to Dismiss and
23 Amended Motion to Dismiss (the motions to dismiss)
24 that we will address.

25 Ernest Fowlke appeared Pro Se, and Wesley

1 Wong appeared on behalf of Respondent.

2 FINDINGS OF FACT

3 The record establishes or the parties do not
4 dispute the following facts. Petitioner resided in
5 Utah when he filed the petition.

6 Petitioner was a realtor and a real estate
7 developer in Utah during the years at issue. He did
8 not file a Federal income tax return for any of the
9 five years at issue. Respondent prepared substitutes
10 for return (SFRs) for those years based upon bank
11 deposits, cash payments, and third-party information
12 reports.

13 Respondent issued Petitioner a statutory
14 deficiency notice based upon the SFRs. Respondent
15 determined deficiencies in Petitioner's Federal income
16 tax for each of the years at issue, late filing
17 additions under Section 6651(a)(1), late payment
18 additions under Section 6651(a)(2). and estimated tax
19 additions under Section 6654. Petitioner timely filed
20 a petition containing only tax-protester arguments.

21 As mentioned previously, Respondent filed a
22 motion for judgment on the pleadings, and Petitioner
23 filed the motions to dismiss. At the hearing on March
24 12, 2012, Petitioner again raised only tax-protester
25 arguments.

OPINION

We must address whether to grant Respondent's motion for judgment on the pleadings. We may grant judgment on the pleadings when the pleadings do not raise genuine issues of material fact or law. Rule 120(a); Nis Family Trust v. Commissioner, 115 T.C. 523, 537 (2000).

We note that the presumption of correctness attaches to the deficiency determination because the deficiency notice shows that Respondent possessed direct evidence of payments to Petitioner, and Petitioner admits to having received earnings and other forms of income from private enterprise in his response to Respondent's motion. See Edwards v. Commissioner, 680 F.2d 1268, 1270 (9th Cir. 1982); Banister v. Commissioner, T.C. Memo. 2008-201.

It is a fundamental tax principle that gross income includes all income from whatever source derived, including wages, nonemployee compensation, interest, and dividends. Sec. 61(a)(1). Petitioner does not dispute that he received payments. Simply put, he denies he is a taxpayer. Simply put, he is. We need not discuss Petitioner's erroneous positions at length. See Wnuck v. Commissioner, 136 T.C. No. 24 (2011). We therefore sustain the deficiency

1 determination in Respondent's statutory notice.

2 We now focus on the additions to tax. An
3 addition to tax is imposed if a taxpayer fails to file
4 a timely Federal income tax return. Sec. 6651(a)(1).
5 The record reflects that Petitioner failed to file a
6 Federal income tax return by the prescribed due date
7 for each of the years at issue.

8 Petitioner presented no evidence showing
9 that his failure to file or pay was due to reasonable
10 cause and not due to willful neglect. As already
11 mentioned, Petitioner has advanced several specious
12 arguments as to why he should not have to pay tax.
13 None of his arguments establish that he had
14 "reasonable cause".

15 Accordingly, we hold that Petitioner is
16 liable for the late filling additions to tax under
17 Section 6651(a)(1).

18 Next, we address the late payment additions
19 to tax imposed under Section 6651(a)(2) for the late
20 payment of tax shown as due on the SFRs that
21 Respondent prepared for Petitioner.

22 SFRs made by the Secretary under Section
23 6020(b) are treated as the returns filed by the
24 taxpayer for purposes of determining whether the late
25 payment addition to tax applies. Sec. 6651(g)(2).

1 Petitioner argues that Respondent does not have
2 authority to prepare SFRs, or issue to him a
3 deficiency notice.

4 Again, we need not discuss Petitioner's
5 erroneous positions at length. See Wnuck v.
6 Commissioner, 136 T.C. No. 24 (2011). We sustain
7 Respondent's determination of the late payment
8 addition to tax under Section 6651(a)(2).

9 We next address the additions to tax under
10 Section 6654(a) for failure to pay estimated tax.
11 There are certain mechanical exceptions to the
12 additions to tax under Section 6654(a) that Petitioner
13 has failed to prove.

14 Consequently, Petitioner is liable for the
15 additions to tax under Section 6654(a) for failure to
16 pay estimated tax for the years at issue.

17 Petitioner made no allegations of error in
18 the petition, other than to assert his frivolous
19 argument that he is not a taxpayer. In other words,
20 he raised no meritorious arguments.

21 The petition must include clear and concise
22 assignments of each and every error the Petitioner
23 alleges to have been committed by the Commissioner,
24 and issues not raised in the petition are deemed
25 conceded. Rule 34(b)(4). As Petitioner has raised no

1 meritorious arguments and has conceded all
2 nonfrivolous arguments, we shall grant the
3 Respondent's motion for judgment on the pleadings.

4 Petitioner asks us to grant his motions to
5 dismiss. He argues that we do not have jurisdiction
6 to hear the case because he is not a taxpayer. He
7 again reverts to the same patently frivolous
8 arguments.

9 We have jurisdiction because Respondent
10 mailed a valid deficiency notice, and Petitioner
11 timely filed a petition for redetermination. See Rule
12 13(a) and (c); Monge v. Commissioner, 93 T.C. 22, 27
13 (1989); Normac, Inc. v. Commissioner, 90 T.C. 142, 147
14 (1988).

15 We note that granting Petitioner's motions
16 to dismiss would have the same effect as granting
17 Respondent's motion for judgment on the pleadings.
18 Whenever we dismiss a case on a ground other than the
19 lack of jurisdiction, we generally must enter a
20 decision finding that the deficiency in tax is the
21 amount determined in the deficiency notice. See Sec.
22 7459(d); Estate of Ming v. Commissioner, 62 T.C. 519,
23 522 (1974). Accordingly, we deny Petitioner's motion
24 to dismiss as moot.

25 Finally, we now address whether it is

1 appropriate to impose a penalty against Petitioner
2 under Section 6673, which authorizes the Tax Court to
3 require a taxpayer to pay to the United States a
4 penalty up to \$25,000 whenever it appears that
5 proceedings have been instituted or maintained by the
6 taxpayer primarily for delay, or that the taxpayer's
7 position in such proceedings is frivolous or
8 groundless. See Sec. 6673; Scruggs v. Commissioner,
9 T.C. Memo 1995-355. affd. without published opinion
10 117 F.3d 1433 (11th Cir. 1997).

11 Respondent orally moved to impose a penalty
12 under Section 6673 and recommended a \$5,000 penalty
13 because the amounts at issue are substantial, but
14 there were no prior years before the Court.

15 We note that the type of arguments
16 Petitioner raises have been deemed by this Court to be
17 frivolous and/or sanctionable under Section 6673. The
18 purpose of Section 6673 is to compel taxpayers to
19 think and to confirm their conduct to settled tax
20 principles. Coleman v. Commissioner, 791 F.2d 68, 71
21 (7th Cir. 1986); see also Grasselli v. Commissioner,
22 T.C. Memo 1994-581.

23 In this proceeding now before the Court,
24 Petitioner asserts nothing but frivolous and
25 groundless arguments. It is apparent from the entire

1 record that Petitioner instituted or maintained this
2 proceeding primarily, if not exclusively, as a protest
3 against the Federal income tax system and his
4 proceeding in this Court is merely a continuation of
5 Petitioner's refusal to acknowledge and satisfy his
6 tax obligations. We are convinced that no purpose
7 would be served in repeating all that has been said
8 about his frivolous and misguided arguments.

9 Petitioner is Pro Se and seeks leniency from
10 the Court. Pro Se status, however, is not a license
11 to litter the dockets of the Federal courts with
12 ridiculous allegations. Parker v. Commissioner, 117
13 F.3d 785 (5th Cir. 1997).

14 We therefore shall require Petitioner to pay
15 a penalty of \$5,000 pursuant to Section 6673(a)(1).
16 In addition, we take this opportunity to admonish
17 Petitioner that the Court will consider imposing a
18 greater penalty if Petitioner returns to the Court and
19 advances similar arguments in the future.

20 To reflect the foregoing, decision will be
21 entered for Respondent, and an appropriate order will
22 be issued granting Respondent's motion for judgment on
23 the pleadings, and denying Petitioner's motions to
24 dismiss, and a \$5,000 penalty will be imposed against
25 Petitioner under Section 6673.

1 This concludes the Court's oral findings of
2 fact and opinion in this case.

3 (Whereupon, at 9:53 a.m., the bench opinion
4 in the above-entitled matter was concluded.)

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